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ELECTRONIC FRONTIER FOUNDATION and
FRED VON LOHMANN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re Subpoenas to Electronic Frontier
Foundation and Fred von Lohmann

Case No. 3:10-mc-80276-JSW
[Related to *Arista Records v. Lime Wire LLC*,
No. 06-5936 (KMW) (S.D.N.Y.)]
SUPPLEMENTAL DECLARATION OF
FRED VON LOHMANN IN SUPPORT OF
EXPEDITED MOTION TO QUASH
SUBPOENAS
[Pursuant to the Court's November 18, 2010
Order (Dkt. #16)]
No hearing date assigned

1 I, Fred von Lohmann, declare pursuant to 28 U.S.C. § 1746 as follows:

2 1. I provide this declaration in response to the Court's November 18, 2010 Order (Doc.
3 #16).

4 2. I am a former staff attorney for the Electronic Frontier Foundation ("EFF"), where I
5 served as Senior Intellectual Property Attorney and Senior Staff Attorney. While employed by EFF,
6 I was EFF's primary contact with Lime Wire.

7 3. In furtherance of the Court's request, I attempted to locate and review documents
8 related to the categories set forth in the subpoena on an expedited basis so as to be able to respond to
9 the Court's inquiries.

10 4. In response to the Court's first question as to whether any non-privileged, responsive
11 documents exist, the short answer is "yes." That said, given the broad language used in describing
12 the categories of documents, there appear to be a number of documents that could be potentially
13 responsive under the all-encompassing language of the subpoena, but are likely not reasonably
14 calculated to lead to the discovery of admissible evidence in the damages phase of the *Lime Wire*
15 case.

16 5. For instance, the following are categories of nonprivileged documents which are
17 arguably irrelevant:

- 18 a. Communications with reporters and interested members of the public who wanted
19 general information about my understanding of how Lime Wire works.
- 20 b. Communications with third parties, and EFF internal communications, about
21 interest in using Lime Wire to share public domain works or EFF materials.

22 6. I do not specifically recall who else at EFF had communications with Mr. Gorton or
23 other Lime Wire personnel, but it appears from my review of my email that the following EFF
24 personnel did:

- 25 • Michael Kwun – former Senior Staff Attorney
- 26 • Pat Berry – Webmaster (communication unrelated to the Lime Wire product)
- 27 • David Looby – former EFF volunteer (communication unrelated to the Lime Wire
28 product)

- Peter Eckersley – Senior Staff Technologist (regarding network neutrality)
- Seth Schoen – Senior Staff Technologist (regarding network neutrality)

7. It also appears that Cindy Cohn, EFF's General Counsel and Legal Director; Corynne McSherry, Senior Staff Attorney and Jason Schultz, a former Senior Staff Attorney were copied on some emails with Lime Wire personnel.

I declare under penalty of perjury that the foregoing is true and correct.
Executed: November 19, 2010

/s/ Fred von Lohmann
Fred von Lohmann

CONCURRENCE IN FILING

Fred von Lohmann concurs in the filing of this pleading.
Dated: November 19, 2010 By: /s/ - Matthew A. Scherb
Matthew A. Scherb

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